

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

JUL 17 2015

CARMELITA REEDER SHINN, CLERK  
U.S. DIST. COURT, WESTERN DIST. OKLA.  
BY                      DEPUTY

LAVERN BERRYHILL,

Plaintiff,

vs.

O.U. MED. CENTER et al.,

Defendants.

No. CIV-15-676-W

**ORDER**

On June 26, 2015, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that plaintiff Lavern Berryhill be denied leave to proceed in forma pauperis and that this matter be dismissed unless Berryhill paid the filing fee in full by a designated date. Berryhill was advised of his right to object, see Doc. 7 at 4, and the matter now comes before the Court on Berryhill's Response to Magistrate's Report and Recommendation. See Doc. 8.

Upon de novo review, the Court concurs with Magistrate Judge Purcell's suggested disposition of Berryhill's request for leave to proceed without prepayment of the filing fee and finds in the absence of allegations in Berryhill's complaint that he "is under imminent danger of serious physical injury," 28 U.S.C. § 1915(g),<sup>1</sup> that Berryhill is prevented from

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<sup>1</sup>Section 1915(g) is "the 'three strikes' provision of the in forma pauperis statute, as amended by the Prison Litigation Reform Act of 1995." Jennings v. Natrona County Detention Center Medical Facility, 175 F.3d 775, 778 (10<sup>th</sup> Cir. 1999). It provides in pertinent part:


In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated . . . in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

proceeding in forma pauperis in this matter. E.g., Jennings v. Natrona County Detention Center Medical Facility, 175 F.3d 775, 778 (10<sup>th</sup> Cir. 1999).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 7] issued on June 26, 2015;
- (2) DENIES Berryhill's Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 5] file-stamped June 22, 2015;
- (3) ORDERS Berryhill to pay the filing fee of \$400.00 in full to the Clerk of the Court on or before August 3, 2015, or show good cause by that date for his failure to do so; and
- (4) ADVISES Berryhill that if the filing fee is not paid in full by the designated date or good cause has not been shown by that same date that this matter will be dismissed without prejudice.

ENTERED this 17<sup>th</sup> day of July, 2015.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE

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28 U.S.C. § 1915(g). "This provision requires so-called "frequent filer" prisoners[, like Berryhill,] to prepay the entire filing fee before federal courts may consider their civil actions . . . ." Jennings, 175 F.3d at 778 (quoting White v. Colorado, 157 F.3d 1226, 1232 (10<sup>th</sup> Cir. 1998)).